

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 1758 OF 1992

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SMT SHARADA SRIKANTIAH
VERSUS
GUJARAT ELECTRICITYBOARD

Appearance:

MR MR ANAND with Mr.S.B.Trivedi for the Petitioner
MR VIMAL PATEL for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Order : 18/11/1999

C A V JUDGMENT

#. The widow of late Shri Srikantiah B.V., filed this

petition under Article 226 of the Constitution of India and praying for direction to the respondents to pay her the arrears of salary due to her late husband on the basis of confirmation of the selection grade by applying nine-years rule.

#. Second prayer has been made to pay her the arrears of salary as if her late husband completed the period of 9 years on the post of Superintendent Engineer between the years 1965 and 1974.

#. The facts of the case, which are not in dispute are as under.

#. The late husband of the petitioner was promoted as Deputy Superintending Engineer on 16/07/65. Though he was holding specific post of Deputy Superintending Engineer but he was posted against the post of Superintending Engineer and to discharge duties as Superintending Engineer he was given the charge allowance. This period is from 16/5/1965 to 28/02/1971. The late husband of the petitioner was promoted to the post of Superintendent Engineer on 2/3/71, which was a regular promotion. He retired on attaining the age of superannuation on 31/7/78. Unfortunately, he died in the year 1985. The petitioner, widow of late Shri Srikantaiah B.V. filed this petition in this court on 12/03/92.

#. Shri Anand, learned counsel for the petitioner contended that the services rendered by late husband of the petitioner as an incharge Superintendent Engineer for the period from 16/7/65 to 28/2/71 are to be taken as services rendered as Superintending Engineer and on completion of 9 years counting from 16/7/65, the late husband of the petitioner should have been given the higher scale i.e. of Additional Chief Engineer.

#. Referring to the document at Annexure-C on the record of the Special Civil application Shri Anand, learned counsel for the petitioner contended that the services rendered by late husband of the petitioner though substantially holding the post of Deputy Superintending Engineer as an incharge of Superintending Engineer are countable for giving the benefit of the higher pay scale under the 9 years since rule. Lastly, it is submitted that merely because the late husband of petitioner promoted to the post of Superintending Engineer it is not relevant and he should have been deemed to have been promoted to the post of Superintending Engineer from 16/7/65 and accordingly 9 years since rule benefits are

to be given.

#. Shri Vimal Patel, learned counsel for the respondents contended that this writ petition deserves to be dismissed only on the ground of delay and laches. The cause of action for this relief was accrued or deemed to have been accrued in this case in the year 1974. The late husband of the petitioner, in his life time has not challenged this action of the respondent, by filing any writ petition. Not only this after his death the petitioner filed this petition after about 7 (seven) years. This inordinate and unexplained delay is itself a ground sufficient for dismissal of this petition.

#. Shri Patel submits that otherwise also this claim of the petitioner under Article 226 of the Constitution of India is not enforceable for the reasons that it is a personal right of her husband and he himself had thought it proper not to challenge the action of the respondents, she cannot file this petition. None of legal or fundamental rights of the petitioner is infringed.

#. On merits Shri Patel, learned counsel for the respondents submits that this writ petition otherwise also is wholly misconceived and misplaced. The benefits of the higher scale under 9 (nine) years since rule is provided to remove stagnation. Where the officer of the Board gets a regular promotion he is not entitled for this benefit. He can get the benefits only on completion of 9 years of services on the promotion post but not by counting his past services on lower post. In this case late husband of the petitioner was promoted regularly as Superintending Engineer on 2/3/71. As Deputy Superintending Engineer he would have been entitled for the benefits of higher pay scale on completion of 9 years but before the completion of that period was promoted and he could have got the benefits of the higher pay scale i.e. of the pay scale of Additional Chief Engineer only after completion of 9 years service from 2/3/1971. In case what the learned counsel for the petitioner contends is accepted Shri Patel submits that it will amount to giving of double benefits to the late officer.

##. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

##. As I do not find any substance in the matter on merits. It is not necessary to discuss and decide on two preliminary objections raised by Shri Patel, learned counsel for the respondents regarding maintainability of the writ petition.

##. The benefits of higher scale under the 9 years service rule has been provided so that the officer may not be stagnated. But in case the promotion is there before completion of 9 years, the officer concerned is not entitled for this benefit. These benefits are available and can only be given in case where the officer concerned is completed 9 years service on the post concerned and his record otherwise does not render him disentitled for these benefits. The petitioner was holding substantive post of Deputy Superintending Engineer on which post he was promoted on 16/7/65. It is true that he was holding charge of the post of Superintending Engineer but merely by holding of the charge of Superintending Engineer he will not be taken to be Superintending Engineer for all the intents and purposes. By holding the charge of Superintending Engineer, his services cannot be counted as service rendered on the post of Superintending Engineer. It is not a promotion.

##. The reference here fruitfully may have to the decision of the apex court in the case of Ramakant Shripad Sinai Advalpalkar V. Union of India & Ors. reported in AIR 1991 SC 1145, the Lordships of Hon'ble Supreme Court held as follows :-

"On the first contention, the very terms of the office order dated 30th August, 1963 (Exhibit A) is clear and conclusive. It says :

Shri Ramakanta Sripada Sinai Advolpalcar, acting 3rd grade officer of the Caixa Economica de Goa will perform the duties of the Treasurer of Caixa Economica de Goa, vice Shri Antonio Xavier Furtado, who died this morning. Shri Advolpalcar should assume the function of the post from today.

Shri Advolpalcar will draw besides the monthly salary of his own post as acting 3rd grade officer an allowance of Rs.100/- p.m. which is payable to the post of treasurer under the existing rule....."

(Emphasis supplied)

The arrangements contemplated by this order plainly does not amount to a promotion of the appellant to the post of Treasurer. The distinction between a situation where a Government servant is promoted to a higher post

and one where he is merely asked to discharge the duties of the higher post is too clear to require any reiteration. Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of the higher post; but gets only that in service parlance is called a "charge allowance". Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement."

##. Otherwise also on completion of the period of 9 years, as said earlier, he would have been entitled for the pay scale of Superintending Engineer. The post of the Deputy Superintending Engineer is lower in status and pay scale than the post of Superintending Engineer on which there is no dispute. The husband of the petitioner was admittedly promoted on regular basis to the post of Superintending Engineer on 2/3/71. To have the higher pay scale he has to work as Superintending Engineer for 9 years but in case the contention of the learned counsel for the petitioner is accepted then he will get the benefits of 9 years within a short period of 3 years of the promotion, which is not permissible under the scheme of higher pay scale or 9 years service rule. I find sufficient merits in the contention of Shri Patel, learned counsel for the respondents that the husband of the petitioner will get double benefits. The fallacy in the arguments of the learned counsel for the petitioner clearly borne out from the fact that even if the husband of the petitioner would have been continued under the arrangement of holding the Additional charge on the post of Superintending Engineer for 9 years would he be given the benefits of pay scale of the additional Chief Engineer and the obvious reply is negative. He could have been given the benefits of the pay scale of the Superintending Engineer only. If such an interpretation to the provisions of the scheme is given and the benefits are being given, the services rendered while holding of the additional charge of the higher post, it will frustrate this very scheme and the officers will get the benefits for which otherwise they may not be entitled. This scheme has to be strictly construed and only on completion of 9 years service on the post concerned

subject to the fulfillment of other conditions the officer shall be entitled for higher scale but not otherwise. The services whatever rendered by the late husband of the petitioner holding as additional charge of Superintending Engineer will be deemed to have been rendered as Deputy Superintendent Engineer for all the purposes. At the most he would have been entitled for the additional charge allowances which has been paid to him. This claim of the petitioner is wholly misconceived and it cannot be granted.

As a result of the aforesaid discussion this writ petition fails and the same is dismissed. Rule discharge. The petitioner is directed to pay Rs.2,000/- as the costs of this litigation to the respondent No.1.

(S.K.Keshote, J.)

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